

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

STEVEN SCOZZARI, Representative
of the Estate of William Christi Scozzari,

Plaintiff,

v.

Case Number 08-10997-BC
Honorable Thomas L. Ludington

CITY OF CLARE, et al.,

Defendants.

**ORDER DENYING PLAINTIFF'S RENEWED MOTION TO TAKE DEPOSITIONS
AND EMERGENCY MOTION TO ALLOW TRIAL DEPOSITIONS, TO RECONSIDER
ALLOWING TESTIMONY BY VIDEO STREAMING OR, IN THE ALTERNATIVE, TO
ADJOURN TRIAL**

Plaintiff Steven Scozzari's renewed motion to take depositions of witnesses Noelle Hite and Hazel Duke and emergency motion to allow trial depositions, to reconsider allowing testimony by video streaming or, in the alternative, to adjourn the trial are now before the Court. ECF Nos. 182, 184. Plaintiff offers notes from two of Hazel Duke's doctors providing that she is unable to travel because of recent elbow surgery and because of recent glaucoma surgery and poor vision.

As noted in *Stoner v. Sowders*, 997 F.2d 209, 212-13 (6th Cir. 1993), "[w]hen [a party] is claiming witness unavailability due to illness, the specific inquiry must focus on both the severity and duration of the illness" and "[t]he court must inquire as to the specific symptoms of the illness to determine what tasks the patient is able to perform, and the court must determine whether there is the probability that the illness will last long enough so that, with proper regard to the importance of the testimony, the trial cannot be postponed." As Defendants note in their response to Plaintiff's motions, Plaintiff's vague doctors' notes are insufficient pursuant to the parameters outlined in *Stoner* to establish Duke's unavailability as a witness nor is Plaintiff's conclusory allegation that

Hite, as Duke's "caregiver," is unable to travel to testify at trial sufficient to establish her unavailability as a witness.

Accordingly, it **ORDERED** that Plaintiff's renewed motion to take depositions of witnesses Noelle Hite and Hazel Duke (ECF No. 182) and Plaintiff's emergency motion to allow trial depositions, to reconsider allowing testimony by video streaming or, in the alternative, to adjourn the trial (ECF No. 184) are **DENIED**.

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: June 8, 2012

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on June 8, 2012.

s/Tracy A. Jacobs
TRACY A. JACOBS